

Non-consensual Pelvic Exam on Anesthetized Women



A Review

An Assessment

And a Proposal to Ban It

Terry Tsang, Groton, CT
Feb 29, 2020

Executive Summary

- Non-consensual pelvic exam (NCPE) on anesthetized women is equivalent to physical/sexual assault, it's unethical, immoral and indefensible [4, 5, 6, 14, 15]
- Maine Legislative Committee approves bill barring NCPE in Feb 2020 [2]
- One medical student from Maine testified in support of the new legislation in Feb 2020 [3]
- Florida senate passed a similar bill unanimously in Feb 2020
- CT has raised a bill SB-243 to ban this practice in Feb 2020
- NCPE under anesthesia is occurring in US & teaching hospitals in CT [1,2,3,4,7,8,9,15,16]
- 10 states have banned this practice; 11 states are considering similar legislation [3, 8 ,10, 16]
- New law will be a “win-win” solution for patients and teaching hospitals
 - Teaching hospitals would tell and ask patients
 - Patients will consent if asked [4, 6, 11, 12]
- So “why not ask first?” [13]
- If this practice is as benign as many medical professionals claim, why not get consent

1 – Goldberg M. She didn't want a pelvic exam. She received one anyway, New York Times, Feb 17, 2020

2 – Associated Press, Committee Approves Bill Barring Pelvic Exams Without Consent, Maine Legislative Committee, Feb 5, 2020

3 - Coleman M. Routefifty.com. States move to protect anesthetized women from non-consensual pelvic exams, Feb 4, 2020

4 - Friesen P. Educational pelvic exams on anesthetized women: why consent matters. Bioethics 2018;32:298-307

5 - Testimony of the ACLU of Hawaii in Support of H.B 2232 to ban non-consensual pelvic exams, Feb 16, 2012

6 - Beh HG. Professor of Law, U of Hawaii, testimony in support of H.B.2232 to ban non-consensual pelvic exams, Feb 15, 2012

7 - Tsai J. The Body Politic, ELLE, Aug 2019 Issue

8 - Laird L. American Bar Association Journal, Pelvic exams performed without patients' permission spur new legislation, Sep 1, 2019

9 - Wilson RF, Kreis AM. Stop treating unconscious female patients like cadavers; Chicago Tribune, Nov 29, 2018

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11 - Caplan AL. Pelvic exams done on anesthetized women without consent: still happening; Perspective, Medscape Business of Medicine, May 2, 2018

12 - Bibby J, Boyd N, Rechman C, Luesley D. (1988) Consent for vaginal examination by students on anesthetized patients, Lancet, 2, 1150

13 - Barnes SS. Practicing pelvic exam by med students on women under anesthesia: why not ask first; Obstet Gynecol 2012 Oct; 120(4): 941-3

14 - Valencia M, Claire M. Providers are sexually assaulting patients – and it's legal, Healthline, Aug 30, 2019

15 - - Friesen P. Why Are Pelvic Exams on Unconscious, Unconsenting Women Still Part of Medical Training? Slate.com, Oct 30, 2018

16 - Adashi EY. Journal of American Medical Association Forum: Teaching Pelvic Examination Under Anesthesia Without Patient Consent, Jan 16, 2019

What is a Non-Consensual Pelvic Exam?

Physicians & medical students perform pelvic exams on female patients under anesthesia for educational purposes without obtaining explicit consent from patients

Consent granted to the surgeon is not permission granted to strangers (medical students) to learn, practice and repeat pelvic exams under anesthesia [1, 2, 3, 4]

Consent granted to the surgery is not consent granted to strangers (medical students) to learn, practice or repeat pelvic exams under anesthesia [1, 2, 3, 4]

Medical staff DO NOT mention pelvic exam to be performed by surgeon for diagnostic and treatment purposes, and the same pelvic exam is to be repeated by medical student(s) as practice solely for the benefit of student(s), not the patient [1,2,3,4,5,6]

In the current consent process, patients typically are informed that medical students may observe and provide care without explicit discussion of what students may do, i.e., up to 4 students will be learning, practicing, and repeating pelvic exams [1, 2, 3, 4, 5, 6]

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2 – Laird L. Pelvic exam performed without patients' permission spur new legislation, American Bar Association Journal, Sep 1, 2019

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4 – Barnes SS. Practicing pelvic exam by med students on women under anesthesia: why not ask first; Obstet Gynecol 2012 Oct; 120(4): 941-3

5 - Thorson P. Medical student, testified to support legislation to ban this practice in Hawaii, Feb 2012

6 - Tsai J. The Body Politic, ELLE magazine , August 2019 issue

Is Non-Consensual Pelvic Exam Under Anesthesia Legal?

Yes, it is legal in United States except where it is banned, i.e. CA, IL, VA, OR, HA, IA, UT, MD, DE, NY [1, 2, 3, 4, 5, 8, 9, 10, 11]

The statement on teaching hospitals' consent forms stated that "students may be involved in observing and giving care unless I disagree" is vague. It allows students to practice any procedures legally [6, 9]

There are cases where an instructor or attending physician wants more than one student to examine the same patient or to have students examine patients for whom the particular pelvic examination is not indicated and it's legal. [3, 6, 7, 9]

1 – Goldberg M. She didn't want a pelvic exam. She received one anyway, New York Times, Feb 17, 2020

2 - Coleman M. Routefifty.com. States move to protect anesthetized women from non-consensual pelvic exams, Feb 4, 2020

3 - Kasprak A. Is Performing Pelvic Exams on Unconscious Women Without Informed Consent Legal? Snopes.com, Sep 21, 2018

2 – Barnes SS. Obstetrics & Gynecology. 120(4):941–943, Oct 2012

3 – Thorson P. Medical student, testimony to support legislation to ban this practice in Hawaii, Feb 15, 2012

4 – Wilson RF. Professor of Law, University of Illinois, Wilson: #MeToo? Some Hospitals Allow Pelvic Exams Without Explicit Consent, Jan 17, 2019

5 – Wilson RF. Epstein Health Law & Policy Program, unauthorized pelvic exams, public engagement initiative, U of Illinois, Oct 18, 2019

6 – Laird L. American Bar Association Journal, Pelvic exams performed without patients' permission spur new legislation, Sep 1, 2019

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8 - Friesen P. Educational pelvic exams on anesthetized women: why consent matters. Bioethics 2018;32:298-307

9 - Valencia M, Claire M. Providers are sexually assaulting patients – and it's legal, Healthline, Aug 30, 2019

10 – R. Right. Vaginal exam on unconscious, non-consenting patients are legal in 42 states, Reproductive Rights Prof Blog, Jul 9, 2019

11 – Green HH. Med students are doing vaginal exams on unconscious, non-consenting patients, Vice Health, Jun 26, 2019

The Core Issues



- Require explicit consent for medical student pelvic exams
- An explicit consent should be specific:
 - Communicate information that is intelligible, relevant, & accurate (**i.e., medical students will practice pelvic exams unless you decline to consent**)
- Current standard consent form is vague & arguably misleading:
 - **i.e. medical students will observe and provide care unless you disagree**
- Consent for pelvic exam should not be presumed in a teaching hospital
- The scope of medical students' involvement in patient care must be clearly defined on the consent form
 - **i.e. up to 4 med students will learn, practice, and repeat pelvic exams while you are under anesthesia unless you decline to consent**

Two Sides of the Argument

FOR Legislation

Consensual

- Consent is construed from the perspective of patients
- Vagina is different from mouth
- Pelvic exam must be disclosed
- Explicit written consent required
- Tell and ask
- Patients can refuse
- Patients will consent if asked
- Required for educational purposes
- Patients go without care unless they can feel safe

AGAINST Legislation

Non-consensual

- Consent is construed from the doctor performing surgery
- Vagina is not different from mouth
- Pelvic exam does not need to be disclosed
- Implicit consent at a teaching hospital
- Don't tell and don't ask
- Patients can't refuse at a teaching hospital
- Patients will not consent if asked
- Not required for educational purposes
- New law on pelvic exam could scare patients away from going to doctors



Is It True Med Students Are Practicing Pelvic Exams on Anesthetized Women Without Consent?

YES, it is true [1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18]

Teaching hospitals do provide consent forms indicating that medical students may be involved in their care. But these forms do not necessarily require the explicit disclosure of pelvic exams, and often times multiple students will perform the same exam on a patient or perform it in cases when is medically unnecessary [5, 6, 8, 10, 11, 13, 15, 16, 18].

- 1 – Goldberg M. She didn't want a pelvic exam. She received one anyway, New York Times, Feb 17, 2020
- 2 - Coleman M. Routefifty.com. States move to protect anesthetized women from non-consensual pelvic exams, Feb 4, 2020
- 3 - Associated Press, Committee Approves Bill Barring Pelvic Exams Without Consent, Maine Legislative Committee, Feb 5, 2020
- 4 – Martin H. Medical student, Testimony in support of LD 1948 to ban pelvic exams without consent in Maine, Feb 5, 2020
- 5 - Dube N, D'Ambrose SA. Non-consensual pelvic exam research report, CT General Assembly, Office of Legislative Research, Jan 2019
- 6 - Pelvic Exams On Anesthetized Women Without Consent: A Troubling And Outdated Practice, Forbes, May 14, 2018
- 7 – Friesen P. Educational pelvic exams on anesthetized women: why consent matters. Bioethics 2018;32:298-307
- 8 – Adashi EY. Journal of American Medical Association Forum: Teaching Pelvic Examination Under Anesthesia Without Patient Consent, Jan 16, 2019
- 9 – Friesen P. Why Are Pelvic Exams on Unconscious, Unconsenting Women Still Part of Medical Training? Slate.com, Oct 30, 2018
- 10 – Barnes SS. Practicing pelvic exam by med students on women under anesthesia: why not ask first; Obstet Gynecol 2012 Oct; 120(4): 941-3
- 11 – Thorson P. Medical student, testimony to support legislation to ban this practice in Hawaii, Feb 2012
- 12 - American College of Ob-Gyn Committee on Ethics. Professional responsibilities in ob-gyn education. ACOG Committee Opinion. 2007;358:1-4.
- 13 - Association of American Medical Colleges. AAMC Statement on Patient Rights and Medical Training. Press release. June 12, 2003.
- 14 – CBS News – Pelvic Exams without Permission, David Caruso, March 12, 2003
- 15 – Tsai J. The Body Politic, ELLE, Aug 2019 Issue
- 16 – Laird L. American Bar Association Journal, Pelvic exams performed without patients' permission spur new legislation, Sep 1, 2019
- 17 – Wilson RF, Kreis AM. Stop treating unconscious female patients like cadavers; Chicago Tribune, Nov 29, 2018
- 18 – Schniederian S, Donovan GK. Ethics vs education: pelvic exams on anesthetized women; Journal Okla State Medical Assoc; 2005 Aug; 98(8):386-8

What Is The Extent Of This Practice in Connecticut?

Medical students confirmed non-consensual pelvic exams took place at Yale [3]

Anesthetized patients in Connecticut are unaware of such practice

Yale admitted to performance of pelvic exams for educational purposes [2]

Yale claimed consent is obtained from patients at the pre-operative visit and that “all consent forms” contain “specific language” explaining the involvement of trainees in the decision making and procedural process. However, one consent form obtained by Terry Tsang only contains the standard disclosure statement that “student may be involved in observing & providing care unless you disagree.” Specific language is nowhere to be found

Conclusion – non-consensual pelvic exam is occurring in Connecticut [1, 3]

1 – Dube N, D’Ambrose SA. Non-consensual pelvic exam research report, CT General Assembly, Office of Legislative Research, Jan 2019

2 - Dr. Martinez’s testimony, CT State Assembly, Public Health Committee testimony for 2019 session of SB 16

3 – Tsai J. The Body Politics, ELLE Aug 2019 Issue

Why Explicit Consent MUST Be Required for Medical Student Pelvic Exams?

Patient being used as a teaching tool with no benefits [1, 3, 5, 11, 12]

Pelvic exam has a different moral significance than suturing a wound [5, 12]

72-100% of women prefer to be asked before being used as a teaching tool [1,5,6,12]

Patients felt violated when awakened during the procedure [2, 3, 4, 5, 12]

ACOG & AAMC require “explicit consent” for pelvic exams since 2003 [1, 8, 9]

Consent from patient is not a negotiable requirement [6]

Patients need this added level of protection and peace of mind [2, 5, 12]

Teaches future doctors to respect women’s bodies and their rights [1, 5, 6, 11, 12, 14]

Patients should have the autonomy to refuse consent [1, 5, 6, 14]

Physicians seeking trust should be deserving of it [5, 6, 11, 14]

1 – Hammoud M, Spector-Bagdady K. Consent for the Pelvic Examination Under Anesthesia by Medical Students, *Obstet & Gynecol*: Dec 2019 – 134(6) - p 1303-1307

2 - Valencia M, Claire M. Providers are sexually assaulting patients – and it’s legal, *Healthline*, Aug 30, 2019

3 - Moser E. As other states require consent for pelvic exams, Connecticut bill stalls, *New London The Day*, July 23, 2019

4 - McDermott J, Johnson CK. States seek explicit patient consent for pelvic exams, *AP News*, May 12, 2019

5 - Friesen P. Why Are Pelvic Exams on Unconscious, Unconsenting Women Still Part of Medical Training? *Slate.com*, Oct 30, 2018

6 – Caplan AL. Pelvic exams done on anesthetized women without consent: still happening; *Perspective, Medscape Business of Medicine*, May 2, 2018

7 – Beh H, Miller F. Professors of Law, University of Hawaii @ Manoa , Testified to support consensual pelvic exam, *Hawaii*, Feb 2012

8 – Wilson RF. College of Law, University of Illinois ,advocate for consensual pelvic exam for more than 20 years

9- American College of Ob-Gyn Committee on Ethics. Professional responsibilities in ob-gyn education. *ACOG Committee Opinion*. 2007;358:1-4.

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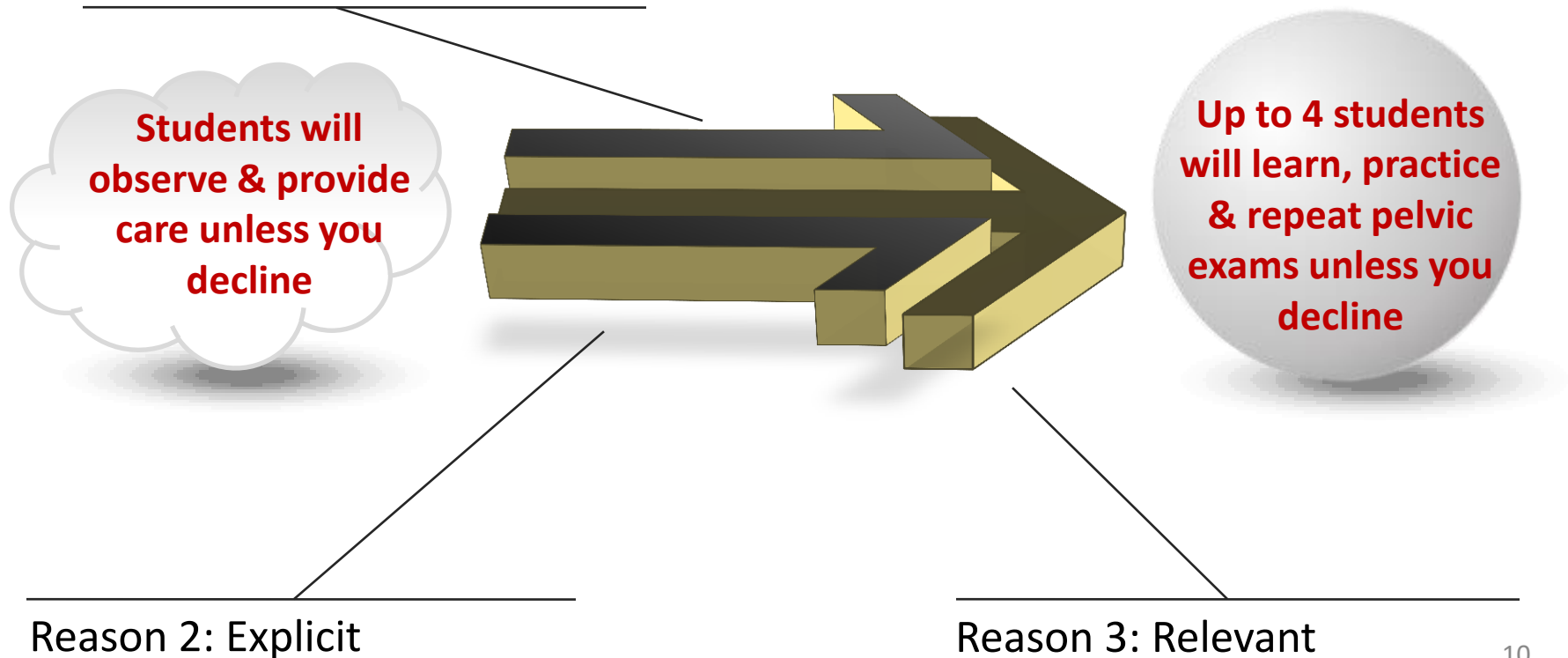
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Proposal for Connecticut Legislators to Consider

- Enact new legislation requiring explicit patient consent to pelvic examination by medical students
- 3 reasons for new law (move from vagueness to clarity)

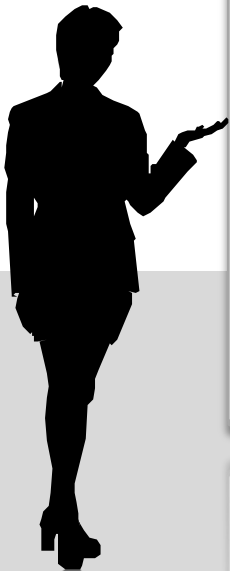
Reason 1: Transparent



Proposal for Connecticut Legislators to Consider

Proposition for Medical Student Pelvic Exams Under Anesthesia (MSPEUA)

- Require all public & private institutions, businesses, & practices in CT where medical students train to have a clear process to obtain informed consent for MSPEUA
- Medical students & relevant medical staff must be trained on the new process each year
- Annual training records must be kept & maintained
- The standard disclosure statement “students may observe & provide care unless you disagree” must be expanded to include explicit details
- The explicit details on the consent form must be transparent conveying relevant & accurate information to patients
 - i.e. up to 4 medical students will learn, practice & repeat MSPEUA unless you disagree
- Teaching hospital must appoint a surgical team coordinator with the sole responsibility to obtain explicit consent from patient
- The signed informed consent form must be part of patient records
- The actual learned, practiced & repeated pelvic exams must be recorded & become part of patient records
- All records must be kept & maintained to ensure compliance



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